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14 PHILIPS LUMILEDS LIGHTING COMPANY,
LLC

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA
17 OAKLAND DIVISION

18 EPISTAR CORPORATION,

19 Plaintiff,

20 v.

21 PHILIPS LUMILEDS LIGHTING
22 COMPANY, LLC,

23 Defendant.

24 AND RELATED COUNTERCLAIMS
25
26
27
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Case No. C-07-5194 CW

**DECLARATION OF RYAN SCHER IN
SUPPORT OF PHILIPS LUMILEDS
LIGHTING COMPANY, LLC's MOTION
FOR SUMMARY JUDGMENT ON
EPISTAR CORPORATION'S CLAIM FOR
BREACH OF CONTRACT**

**EXHIBITS 1-3, 6-9, 11, 12, 14-16, and 18-21
SUBMITTED UNDER SEAL**

Date: July 10, 2008
Time: 2:00 p.m.
Location: Courtroom 2, 4th Floor
Judge: The Honorable Claudia Wilken

1 I, Ryan Scher, hereby declare as follows:

2 1. I am an attorney duly licensed and admitted to practice before this Court and an
3 associate at the law firm of Morgan, Lewis & Bockius LLP. I am one of the attorneys for
4 defendant and counterclaimant Philips Lumileds Lighting Company, LLC ("Lumileds"), in the
5 present action. I have personal knowledge of the facts stated herein, and if called and sworn as a
6 witness, I could testify competently thereto. I make this declaration in support of Lumileds'
7 Motion For Summary Judgment On Epistar Corporation's Claim For Breach Of Contract.

8 2. Exhibit 1 is a true and correct copy of the Settlement Agreement entered into by
9 Lumileds Lighting, U.S. LLC (now Philips Lumileds Lighting Co., LLC) and Epistar Corporation
10 ("Epistar") on or about June 20, 3004, to settle the lawsuit *Lumileds Lighting U.S., LLC v. Epistar*
11 *Corp.*, Nos. C 02-5077 and C 03-1130 CW (PVT) (N.D. Cal.). ***This exhibit contains***
12 ***confidential information, subject to protective order.***

13 3. Exhibit 2 is a true and correct copy of excerpts from Epistar Corporation's
14 Prehearing Brief, which it filed on July 14, 2006, in the U.S. International Trade Commission's
15 ("ITC's" or "Commission's") investigation *In the Matter of Certain High-Brightness Light*
16 *Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-556. ***This exhibit***
17 ***contains confidential information, subject to protective order.***

18 4. Exhibit 3 is a true and correct copy of excerpts from the Corrected Prehearing
19 Statement of Complainant Philips Lumileds Lighting Company, LLC, which it filed on July 17,
20 2006, in the ITC's investigation *In the Matter of Certain High-Brightness Light Emitting Diodes*
21 *and Products Containing Same*, USITC Inv. No. 337-TA-556. ***This exhibit contains***
22 ***confidential information, subject to protective order.***

23 5. Exhibit 4 is a true and correct copy of excerpts from the August 7, 2006, transcript
24 of the evidentiary hearing in the ITC's investigation *In the Matter of Certain High-Brightness*
25 *Light Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-556.

26 6. Exhibit 5 is a true and correct copy of an exchange of e-mails between counsel for
27 Epistar (Yitai Hu, Esq.) and counsel for Lumileds (Daniel J. Johnson, Esq.) from August 6-7,

2006, in the ITC's investigation *In the Matter of Certain High-Brightness Light Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-556. The redacted portion contains privileged and confidential information exchanged among attorneys for Lumileds.

7. Exhibit 6 is a true and correct copy of excerpts from Epistar Corporation's Seventh Supplemental Responses To Lumileds Lighting U.S., LLC's First Set Of Interrogatories (Nos. 1-15), which it served on March 23, 2004, in the action *Lumileds Lighting U.S., LLC v. Epistar Corporation*, Case No. 02-5077 CW (EAI) (N.D. Cal.). ***This exhibit contains confidential information, subject to protective order.***

8. Exhibit 7 is a true and correct copy of excerpts from Respondent Epistar Corporation's Fourth Supplemental Responses To Complainant Lumileds Lighting U.S., LLC's First Set Of Interrogatories, which it served on May 9, 2006, in the ITC's investigation *In the Matter of Certain High-Brightness Light Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-556. ***This exhibit contains confidential information, subject to protective order.***

9. Exhibit 8 is a summary table prepared by counsel for Philips Lumileds, entitled "Comparison Of The Composition And Thickness Of The Layers In The 2004 OMA LEDs And The 2006 OMA I And II LEDs," based on Epistar's disclosures in Exhibits 6 and 7, *supra*. ***This exhibit contains confidential information, subject to protective order.***

10. Exhibit 9 is a true and correct copy of excerpts from the March 27, 2006, deposition testimony of Mr. C.C. Lu in the ITC's investigation *In the Matter of Certain High-Brightness Light Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-556, which was admitted as Complainant's Exhibit CX 605C in that investigation. ***This exhibit contains confidential information, subject to protective order.***

11. Exhibit 10 is a true and correct copy of Complainant Lumileds Lighting U.S., LLC's First Notice of Deposition to Respondent Epistar Corporation (Topic Nos. 1-13), which it served on February 13, 2006, in the ITC's investigation *In the Matter of Certain High-Brightness Light Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-556.

12. Exhibit 11 is a true and correct copy of excerpts from the March 28, 2006,

1 deposition testimony of Mr. C.C. Lu in the ITC's investigation *In the Matter of Certain High-*
2 *Brightness Light Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-556,
3 which was admitted as Complainant's Exhibit 606C in that investigation. ***This exhibit contains***
4 ***confidential information, subject to protective order.***

5 13. Exhibit 12 is a true and correct copy of excerpts from the June 28, 2006,
6 deposition of Gerald B. Stringfellow, in the ITC's investigation *In the Matter of Certain High-*
7 *Brightness Light Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-556,
8 which was admitted as Complainant's Exhibit 609C in that investigation. ***This exhibit contains***
9 ***confidential information, subject to protective order.***

10 14. Exhibit 13 is a true and correct copy of excerpts from the September 9, 2003,
11 Transcript of Proceedings Before the Honorable Patricia V. Trumbull, Chief United States
12 Magistrate Judge, in the action *Lumileds Lighting U.S., LLC v. Epistar Corp.*, Case No. 02-5077
13 CW (EAI) (N.D. Cal.).

14 15. Exhibit 14 is a true and correct copy of excerpts from Lumileds Lighting U.S.
15 LLC's Notice Of Motion And Motion To Compel Discovery From Epistar Corporation
16 [Replacement], which it filed on March 10, 2004, in the action *Lumileds Lighting U.S., LLC v.*
17 *Epistar Corp.*, Case No. C 02-5077 CW (PVT) (N.D. Cal.). ***This exhibit contains confidential***
18 ***information, subject to protective order.***

19 16. Exhibit 15 is a true and correct copy of excerpts from Epistar Corporation's
20 Opposition To Lumileds Lighting U.S., LLC's Motion To Compel Discovery, which it filed on
21 March 16, 2004, in *Lumileds Lighting U.S., LLC v. Epistar Corp.*, Case No. C 02-5077 CW
22 (PVT) (N.D. Cal.). ***This exhibit contains confidential information, subject to protective order.***

23 17. Exhibit 16 is a true and correct copy of excerpts from Lumileds Lighting U.S.,
24 LLC's Reply In Support Of Its Motion To Compel Discovery From Epistar Corporation, which it
25 filed on March 23, 2004, in the action *Lumileds Lighting U.S., LLC v. Epistar Corp.*, Case No. C
26 02-5077 CW (PVT). ***This exhibit contains confidential information, subject to protective order.***

27 18. Exhibit 17 is a true and correct copy of the Notice Of Commission Determination
28 To Reverse-In-Part And Modify-In-Part A Final Initial Determination Finding A Violation Of

1 Section 337; Issuance Of A Limited Exclusion Order; And Termination Of The Investigation,
 2 which was entered on May 9, 2007, in the ITC's investigation *In the Matter of Certain High-*
 3 *Brightness Light Emitting Diodes and Products Containing Same*, USITC Inv. No. 337-TA-556.

4 19. Exhibit 18 is a true and correct copy of excerpts from the Order Granting
 5 Defendants' Motion For Summary Judgment In Part And Denying Plaintiff's Cross-Motion For
 6 Summary Judgment, which was entered on June 14, 2001, in the consolidated action *United*
 7 *Epitaxy Company, Ltd. v. Hewlett-Packard Co.*, No. C 00-2518 CW (N.D. Cal.). ***This exhibit***
 8 ***contains confidential information, subject to protective order.***

9 20. Exhibit 19 is a true and correct copy of Epistar's demonstrative exhibits RDX 500
 10 (depicting Epistar's OMA I) and RDX 501 (depicting Epistar's OMA II), which were admitted
 11 into evidence in the ITC's investigation *In the Matter of Certain High-Brightness Light Emitting*
 12 *Diodes and Products Containing Same*, USITC Inv. No. 337-TA-556. ***This exhibit contains***
 13 ***confidential information, subject to protective order.***

14 21. Exhibit 20 is a true and correct copy of Deposition Exhibit 15 from the January 29,
 15 2004, Deposition of Mr. M.J. Jou in the action *Lumileds Lighting U.S. LLC v. Epistar*
 16 *Corporation*, Case No. C-02-05077 CW (N.D. Cal.), which was admitted into evidence as CX
 17 427C in ITC's investigation *In the Matter of Certain High-Brightness Light Emitting Diodes and*
 18 *Products Containing Same*, USITC Inv. No. 337-TA-556. ***This exhibit contains confidential***
 19 ***information, subject to protective order.***

20 22. Exhibit 21 is a true and correct copy of excerpts from the January 29, 2004,
 21 30(b)(6) Deposition Of Ming-Jiunn Jou, which was taken in the action *Lumileds Lighting U.S.*
 22 *LLC v. Epistar Corporation*, Case No. C-02-05077 CW (N.D. Cal.). ***This exhibit contains***
 23 ***confidential information, subject to protective order.***

24 23. Exhibit 22 is a true and correct copy of U.S. Patent No. 5,008,718.

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1 I declare under penalty of perjury under the laws of the United States that the foregoing is
2 true and correct.

3 Executed on this 5th day of June, 2008, at Palo Alto, California.

4 Respectfully submitted,

5
6 By: /s/ Ryan L. Scher
7 Ryan L. Scher (Bar No. 244706)
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15 Attorneys for Defendant and Counterclaimant
16 PHILIPS LUMILEDS LIGHTING COMPANY,
17 LLC
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ATTESTATION PURSUANT TO GENERAL ORDER 45

I, Michael J. Lyons, am the ECF user whose ID and password are being used to file this Declaration of Ryan L. Scher In Support of Philips Lumileds' Motion for Summary Judgment. In compliance with General Order 45.X.B., I declare under the penalty of perjury under the laws of the United States of America that Ryan L. Scher has concurred in this filing.

Executed this 5th day of June 2008, at Palo Alto, California.

/s/ Michael J. Lyons